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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA  
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9 UNITED STATES OF AMERICA,

Case No. 2:18-cr-00201-JCM-CWH

10 Plaintiff,

ORDER

11 v.

12 NECESTER DOUGLAS WARMACK,

13 Defendant.

14 Presently before the court is the matter of *USA v. Warmack*, case no. 2:18-cr-00201-JCM-  
15 CWH.

16 On July 3, 2019, the court sentenced defendant Necester Warmack (“defendant”) to  
17 twelve (12) months and one (1) day of imprisonment for the crime of escape from custody, in  
18 violation of 18 U.S.C. § 751(a). (ECF No. 47). The court issued its final judgment on July 8,  
19 2019. (ECF No. 48).

20 On July 16, 2019, defendant filed an unopposed motion to amend judgment to include a  
21 recommendation that he serve his sentence “in either Tallahassee FCI or Coleman FCC so that  
22 he may be close to his family in Florida.” (ECF No. 49). Defendant’s motion must be denied.

23 “[A] district court does not have inherent power to resentence defendants at any time. Its  
24 authority to do so must flow either from the court of appeals mandate . . . or from Federal Rule  
25 of Criminal Procedure 35.” *United States v. Handa*, 122 F.3d 690, 691 (9th Cir. 1997) (citation  
26 omitted); *see United States v. Caterino*, 29 F.3d 1390, 1394 (9th Cir. 1994) (“The authority to  
27 change a sentence must derive from some federal statutory authority.”); *United States v. Smartt*,  
28 129 F.3d 539, 540 (10th Cir. 1997) (same).

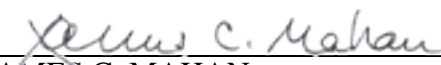
1 Under Rule 35, a district court may “correct a sentence that resulted from arithmetical,  
2 technical, or other clear error” within fourteen days of imposing the sentence. Fed. R. Crim. P.  
3 35(a). No such error was made here. Defendant admits in his motion that he “neglected to  
4 request a recommendation from this [c]ourt regarding the facility in which he would serve his  
5 sentence.” (ECF No. 49). This is not the type of error that Rule 35 was designed to correct. *See*  
6 *United States v. Penna*, 319 F.3d 509, 513 (9th Cir. 2003) (“Rule 36 is a vehicle for correcting  
7 clerical mistakes but it may not be used to correct judicial errors in sentencing.”) (emphasis in  
8 original).

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant’s motion to  
11 amend or correct sentence (ECF No. 49) be, and the same hereby is, DENIED.

12 IT IS SO ORDERED.

13 DATED THIS 19<sup>th</sup> day of July 2019.

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16 JAMES C. MAHAN  
17 UNITED STATES DISTRICT JUDGE  
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